

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 762

Introduced by Senators Brulte and Margett

February 21, 2003

An act to ~~amend Section 1210 of~~ *add Section 11405* to the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Brulte. ~~Nonviolent drug~~ *Drug possession: GHB, rohypnol, ketamine, and ecstasy intent to commit sexual offense.*

(1) Existing law categorizes controlled substances into Schedules I to V, inclusive, and places the greatest restrictions and penalties on those contained in Schedule I. ~~Existing law, added by initiative statute, generally provides that, effective July 1, 2001, (a) a person convicted of a nonviolent drug possession offense shall receive probation with completion of a drug treatment program as a condition of that probation, and (b) a person's parole may not be suspended or revoked for committing a nonviolent drug possession offense or for violating a drug-related condition of parole, but an additional condition of parole for those offenses or violations shall be the completion of a drug treatment program. Existing law defines the term "nonviolent drug possession offense" to include the unlawful possession, use, or transportation for personal use of any controlled substance classified in Schedules I to V, inclusive.~~

~~This bill would exclude the drugs GHB, rohypnol, ketamine, and ecstasy, as specified, from coverage by the term "nonviolent drug possession offense." By increasing the number of people convicted of unlawful drug possession who would be subject to incarceration rather than drug treatment~~

This bill would provide that every person who possesses a controlled substance classified in Schedules I to V, inclusive, or a controlled substance analog, as defined, with the intent to use the substance to commit a sexual offense, as specified, shall be guilty of a felony and shall be punished imprisonment in the state prison for a term of 3, 4, or 5 years. By creating new crimes, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(3) Since this bill would add provisions that supplement provisions of the above-mentioned initiative, it would amend that initiative statute and, in accordance with the requirements of that initiative statute, would require a 2/3's vote for enactment by the Legislature.~~

Vote: ~~2/3~~—majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1210 of the Penal Code is amended to~~
2 ~~read:~~
3 ~~1210. Definitions~~
4 ~~As used in Sections 1210.1 and 3063.1 of this code, and~~
5 ~~Division 10.8 (commencing with Section 11999.4) of the Health~~
6 ~~and Safety Code:~~
7 ~~(a) The term “nonviolent drug possession offense” means the~~
8 ~~unlawful possession, use, or transportation for personal use of any~~
9 ~~controlled substance identified in Section 11054, 11055, 11056,~~
10 ~~11057 or 11058 of the Health and Safety Code, not including~~
11 ~~3,4-methylenedioxymethamphetamine (also known as MDMA,~~
12 ~~XTC, or Ecstasy), gamma hydroxybutyric acid (also known as~~
13 ~~GHB) as specified in paragraph (3) of subdivision (e) of Section~~
14 ~~11054, ketamine as specified in subdivision (g) of Section 11056,~~
15 ~~or rohypnol (also known as flunitrazepam) as specified in~~
16 ~~paragraph (13) of subdivision (d) of Section 11057; or the offense~~
17 ~~of being under the influence of a controlled substance in violation~~
18 ~~of Section 11550 of the Health and Safety Code. The term~~

~~“nonviolent drug possession offense” does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.~~

~~(b) The term “drug treatment program” or “drug treatment” means a state licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term “drug treatment program” or “drug treatment” includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001; such a program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term “drug treatment program” or “drug treatment” does not include drug treatment programs offered in a prison or jail facility.~~

~~(c) The term “successful completion of treatment” means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.~~

~~(d) The term “misdemeanor not related to the use of drugs” means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).~~

SECTION 1. Section 11405 is added to the Health and Safety Code, to read:

11405. (a) Every person who possesses a controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058, or a controlled substance analog, with the intent to use the substance to commit a sexual offense as described in Section 220, 243.4, 261, 261.5, 262, 264.1, 269, 286, 288, or 288a, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term of three, four, or five years.

1 (b) Except as provided in subdivision (c), “controlled
2 substance analog” means either of the following:

3 (1) A substance the chemical structure of which is substantially
4 similar to the chemical structure of a controlled substance
5 classified in Section 11054, 11055, 11056, 11057, or 11058.

6 (2) A substance which has, is represented as having, or is
7 intended to have a stimulant, depressant, or hallucinogenic effect
8 on the central nervous system that is substantially similar to, or
9 greater than, the stimulant, depressant, or hallucinogenic effect on
10 the central nervous system of a controlled substance classified in
11 Section 11054, 11055, 11056, 11057, or 11058.

12 (c) The term “controlled substance analog” does not mean any
13 of the following:

14 (1) Any substance for which there is an approved new drug
15 application as defined under Section 505 of the federal Food,
16 Drug, and Cosmetic Act (21 U.S.C. Sec. 355) or which is generally
17 recognized as safe and effective for use pursuant to Sections 501,
18 502, and 503 of the federal Food, Drug, and Cosmetic Act (21
19 U.S.C. Secs. 351, 352, and 353) and (21 C.F.R. 330 et seq.).

20 (2) With respect to a particular person, any substance for which
21 an exemption is in effect for investigational use for that person
22 under Section 505 of the federal Food, Drug, and Cosmetic Act (21
23 U.S.C. Sec. 355), to the extent that the conduct with respect to that
24 substance is pursuant to the exemption.

25 (3) Any substance, before an exemption as specified in
26 paragraph (2) takes effect with respect to the substance, to the
27 extent the substance is not intended for human consumption.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.